

**CALIFORNIA COUNCIL FOR ENVIRONMENTAL
AND ECONOMIC BALANCE
100 Spear Street, Suite 805, San Francisco, CA 94105**

VIA ELECTRONIC MAIL

February 14, 2005

The Honorable Alan Lloyd
Secretary
California Environmental Protection Agency
P.O. Box 2815
Sacramento, CA 95812

**Re: Interagency Working Group Meeting: CCEEB's Comments regarding
Cal/EPA Environmental Justice Action Plan Draft Phase I
Implementation Proposals (February 4, 2005 Versions):**

- 1) Proposed Working Definition for "Multi-Media Cumulative Impacts" (Attachment 1)**
- 2) Proposed Working Definition for "Precautionary Approach" (Attachment 2)**
- 3) ARB's Pilot Project Proposal (Summary) for Reduction of Air Pollution Exposure in Urban Communities in Southern California (Attachment 3)**

Dear Dr. Lloyd:

The California Council for Environmental and Economic Balance ("CCEEB") is a coalition of business, labor and public leaders that strives to advance collaborative strategies that protect public health and the environment while allowing California's economy to grow. CCEEB has reviewed the draft proposals and the response to comment documents that Cal/EPA has released for the February 15, 2005 Advisory Committee meeting and the February 16, 2005 Interagency Working Group meeting. The extensive amount of work that Cal/EPA and the Boards, Departments and Office of Environmental Health Hazard Assessment (the "BDOs") have put into developing the Cal/EPA Environmental Justice ("EJ") Action Plan Phase 1 implementation proposals in a thoughtful and coordinated manner is readily apparent. Attached to this letter are three attachments with CCEEB's specific comments regarding the three proposals listed above.

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CCEEB appreciates Cal/EPA's and the BDOs' consideration of these comments. If you have any questions, or if you would like to discuss the comments, please contact me at (415) 512-7890 or Cindy Tuck at (916) 442-4249.

Sincerely,

[Original signed by]

VICTOR WEISSER
President

Via Electronic Mail

cc: Members, Interagency Working Group
Mr. James Branham
Ms. Tam Doduc
Ms. Maureen Gorsen
Dr. John Faust
Mr. Tim Hall
Mr. Jim Marxen
Dr. Linda Murchison
Mr. Dale Shimp
Mr. Dmitri Smith
Mr. Jackson Gualco
Mr. Robert Lucas
Ms. Cindy Tuck

**CALIFORNIA COUNCIL FOR ENVIRONMENTAL
AND ECONOMIC BALANCE
COMMENTS REGARDING CAL/EPA'S PROPOSED DEFINITION OF
"MULTI-MEDIA CUMULATIVE IMPACTS" (2/4/05 DRAFT)**

- A. Comment 1 - Exposure and Risk Assessment:** CCEEB concurs with Cal/EPA's statement in the text that the proposed definition is intended to address multi-media cumulative impacts within the traditional health risk assessment paradigm (February 4 Draft at Page 2).

CCEEB concurs with this statement for the following reasons. First, this statement is consistent with a core part of the Action Plan - the development of Children's Environmental **Risk Reduction** Plans. Second, this statement is consistent with Cal/EPA's commitment to use science-based analysis for multi-media cumulative impacts. Third, as was reiterated by one stakeholder in the January 20, 2005 Cal/EPA call with stakeholders, the "end game" for some environmental justice organizations in this effort is to change the permitting process (i.e., to affect which facilities/projects are allowed to be permitted in some areas). Those comments make it all the more important that Cal/EPA develop a definition that allows for objective analysis of multi-media cumulative impacts using peer-reviewed scientific tools. The traditional health risk assessment paradigm allows for objective analysis and the use of peer-reviewed scientific tools.

- B. Comment 2 - Social Factors:** The caveats in the new proposal regarding social factors are critical to ensure that Cal/EPA's efforts to define, assess and address multi-media cumulative impacts are science-based and allow for objective analysis.

1. Background

On November 26, 2004 and January 31, 2005, CCEEB provided written comments to Cal/EPA and the Office of Environmental Health Hazard Assessment ("OEHHA") Staff strongly recommending that the definition of "multi-media cumulative impacts" and the anticipated accompanying narrative **not** include social factors. (Some have suggested that Cal/EPA should consider social factors such as lack of health insurance, emotional stress, dilapidated housing, crime, vermin, nutrition, etc.) In our prior comments, we noted that inclusion of such factors in the scope of "multi-media cumulative impacts" would suggest that Cal/EPA could somehow resolve those types of social issues. We noted that these are issues that present serious concerns for some communities, but they are issues that are beyond Cal/EPA's jurisdiction and are beyond Cal/EPA's capacity to resolve.

Some had suggested inclusion of the social factors based on a premise that members of the public who are subject to such factors are more vulnerable to environmental exposures. We noted that CCEEB was not aware of peer-reviewed data and

methodologies to support inclusion of these social factors in a definition of “multi-media cumulative impacts.” We noted our strong concern that allowing consideration of an undefined host of speculative factors that cannot be quantified would lead to arbitrary decisions – not effective uses of limited resources that are critical for improved public health. We noted that OEHHA’s guidance already takes into account populations with high vulnerability.

2. New Cal/EPA Proposal regarding Social Factors

In the February 4, 2005 paper that presents the proposed definition of “multi-media cumulative impacts,” Cal/EPA proposes the following regarding social factors:

“and explore the feasibility of including other quantifiable factors that could influence the susceptibility of sensitive populations. Consideration of such factors in a cumulative impacts analysis would be limited to the extent that scientific data and science-based peer-reviewed tools and guidelines are available to assess and quantify how these factors affect the communities’ sensitivity to emissions, discharges, exposures and health risk.”

Although Staff is proposing to open the issue of social factors, it is evident from this proposal that Staff is proposing to do so in a manner that is consistent with Cal/EPA’s commitment to conduct the cumulative impacts work with a strong scientific foundation and to proceed methodically and thoughtfully. The caveats in the above proposal (e.g., limiting consideration to the extent that data and science-based peer-reviewed tools are available to assess and quantify how the factors affect sensitivity) are critical to making the proposal workable. As noted above, the publicly stated “end game” for some organizations in this effort is to change the permitting process (i.e., to affect which facilities/projects (with the associated potential new jobs) are allowed to be permitted in some areas). Those statements make it critical that Cal/EPA develop a definition that allows for objective analysis of multi-media cumulative impacts using peer-reviewed scientific tools – as opposed to arbitrary decisions based on speculation.

CCEEB still has strong reservations regarding Cal/EPA moving into this area. Cal/EPA has taken on a huge technical and policy challenge by moving into the area of **cumulative impacts**. By exploring the cumulative impacts on a **multi-media** basis, Cal/EPA is adding another vast dimension to that already challenging area of analyzing cumulative impacts for an individual environmental medium. Cal/EPA’s work on analyzing and addressing pollution on a cumulative and multi-media basis should focus on what pollution people are being exposed to from multiple sources, and the health risk posed by the exposure. We encourage Cal/EPA and the BDOs to really consider whether this is the time to open the issue of social factors. If Cal/EPA and the BDOs decide to open this issue, the caveats in Staff’s proposal are absolutely critical.

ATTACHMENT 2

CALIFORNIA COUNCIL FOR ENVIRONMENTAL AND ECONOMIC BALANCE COMMENTS REGARDING CAL/EPA'S PROPOSED DEFINITION OF "PRECAUTIONARY APPROACH" (2/4/05 DRAFT)

- A. Comment 1 - Proposed Definition: Serious or Irreversible Harm:** CCEEB suggests that Cal/EPA add the words "or irreversible" before the word "harm" as shown with underscore and explained below:

"Precautionary approach" means taking action to protect public health and the environment if a reasonable threat of serious or irreversible harm exists based upon the best available science, even if absolute and undisputed scientific evidence is not available to determine the exact nature and extent of risk.

In the process of developing the draft definition, our understanding from the background paper is that Cal/EPA reviewed many statements/definitions in this area and focused on four examples of definitions from other entities. Please note that as excerpted below with emphasis added, all four of those definitions/statements include the "serious or irreversible standard."

United Nations (Rio Declaration): "(...) Where there are threats of **serious or irreversible** damage, lack of full scientific certainty (...)."

Government of Canada: "(...) The precautionary approach recognizes that the absence of full scientific certainty shall not be used as a reason to postpone decisions where there is a risk of **serious or irreversible** harm. (...)"

U.S. Commission on Ocean Policy: "(...) Where threats of **serious or irreversible** damage exist, lack of full scientific certainty (...)."

City and County of San Francisco: "Where threats of **serious or irreversible** damage to people or nature exist, lack of full scientific certainty (...)."

The four different organizations decided that a precautionary approach is appropriate when there is a threat of serious or irreversible harm. The Health and Safety Code Section that Cal/EPA Staff also reviewed provides the following:

"That while absolute and undisputed scientific evidence may not be available to determine the exact nature and extent of risk from **toxic air contaminants**, it is necessary to take action to protect public health."
[Cal. Health and Safety Code Section 39650 (e), emphasis added.]

This code section refers to “toxic air contaminants.” Section 39655 defines “toxic air contaminant as an air pollutant which may cause or contribute to an increase in **mortality** or in **serious** illness, or which pose a present or potential **hazard** to human health.” [Emphasis added.] The bolded statutory tests that apply to the definition of “toxic air contaminant” are consistent with a test of “serious or irreversible” harm.

CCEEB encourages Cal/EPA to be consistent with the “serious or irreversible” language chosen by the United Nations, Canada and other organizations. Accordingly, CCEEB suggests that Cal/EPA add the words “or irreversible” before the word harm in the proposed definition of “precautionary approach” as shown above. CCEEB recognizes that Cal/EPA has added in the latest (February 4, 2005) draft the word “serious” to “harm,” and **this is a crucial addition**. There are limited resources to address environmental health risks. It makes sense to focus California’s resources on areas where there are well-established risks. It also makes sense to evaluate areas where there are reasonable threats of serious (or irreversible) harm and take appropriate, measured action.

B. Comment 2 – Proposed Definition: CCEEB supports the proposed reference to “best available science” in the proposed working definition of “precautionary approach.”

As Cal/EPA is well aware, the application of a precautionary approach is not new to Cal/EPA and the BDOs. As the BDOs have applied precaution in the development of regulatory programs, their use of best available science has increased program effectiveness. CCEEB supports the proposed reference to “best available science” in the proposed working definition of “precautionary approach.”

**CALIFORNIA COUNCIL FOR ENVIRONMENTAL
AND ECONOMIC BALANCE
COMMENTS REGARDING
ARB'S PILOT PROJECT PROPOSAL (SUMMARY) FOR REDUCTION OF
AIR POLLUTION EXPOSURE IN
URBAN COMMUNITIES IN SOUTHERN CALIFORNIA**

CCEEB appreciates that ARB has addressed many of CCEEB's comments during the development of ARB's Pilot Project Proposal. Following is our one comment at this time regarding this pilot project.

- A. Comment 1: Methodology & Performance Indicators:** We suggest that one performance indicator that should be added to this section is whether the pilot project was able to compare the cumulative air toxics risk assessed for each of the three areas in the pilot project against the average air toxics risk for the South Coast Air Basin (using existing average air toxics risk information for the Basin).

Since an important focus of environmental justice work is on whether a particular community has a disparate impact (e.g., higher health risk for air toxics) when compared to the relevant region, it seems that it would be a fundamental step for the ARB pilot project to estimate cumulative air toxics risk for each of the three communities under the pilot project and compare those estimates with the average air toxics risk for the Basin. Since the focus of the pilot projects is to assess cumulative impacts and Cal/EPA has indicated that the evaluation of health risk is expected to be a major component of the cumulative impacts assessment for the pilot projects, it seems that the analysis of cumulative air toxics risk would be available and could be compared with existing information for the region.